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HAWAII
LABOR RELATIONS BOARD

Attorneys for Director of Labor
and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

| | |
|-------------------------------|----------------------------------|
| In the Matter of |) CASE NO. OSH 2004-10 |
| DIRECTOR, DEPARTMENT OF LABOR |) (Inspection No. 307258533) |
| AND INDUSTRIAL RELATIONS, |) |
| |) STIPULATION AND SETTLEMENT |
| Complainant, |) AGREEMENT; EXHIBIT A; APPROVAL |
| |) AND ORDER |
| vs. |) |
| |) |
| TREES OF HAWAII, INC., |) |
| |) |
| Respondent. |) |
| |) |

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations
("Director") and Respondent TREES OF HAWAII, INC. ("Respondent")
having reached a full and complete settlement of the above-
captioned contested case presently pending before the Hawaii
Labor Relations Board ("Board") stipulate and agree as follows:

On or about June 17, 2004, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 91-326 Kauhi Street, Kapolei, Hawaii, 96707.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on July 21, 2004 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards, and assessed an aggregate penalty of \$875.00. See Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a workplace at 91-326 Kauhi Street, Kapolei, Hawaii, 96707.

3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

4. The violations and corresponding characterizations as stated in the Citation are affirmed. See Exhibit A.

5. The Director reduces the aggregate penalty from \$875.00 to \$500.00, which shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement.

6. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

7. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

8. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

9. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

DATED: Honolulu, Hawaii, 10/13/04

TREES OF HAWAII, INC.

By: [Signature]

Its [Signature]

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS

[Signature]

HERBERT B.K. LAU
Deputy Attorney General
Attorney for Director of Labor
and Industrial Relations,
State of Hawaii

[Signature]

NELSON B. BEFITELE
Director of Labor and
Industrial Relations, State
of Hawaii

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 112

DATED: October 13, 2004

[Signature]

BRIAN K. NAKAMURA, Chair

[Signature]

CHESTER C. KUNITAKE, Member

[Signature]

KATHLEEN RACUYA-MARKRICH, Member

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813
Phone: (808) 586-9110 FAX: (808) 586-9104



Certified Number: 7003 3110 0003 5610 3311

Citation and Notification of Penalty

To:
Trees of Hawaii Inc
and its successors
91-326 Kauhi St
Kapolei, HI 96707

Inspection Number: 307258533 Charles Flippo

Inspection Date(s): 06/17/2004 - 06/18/2004

Issuance Date: 07/21/2004

OSHA ID: D3062

Optional Report No.: 03504

Inspection Site:
91-326 Kauhi St
Kapolei, HI 96707

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the law has occurred unless there is a failure to contest as provided for in the law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For Willful and Repeat violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as Serious and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - you should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 07/21/2004. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 307258533

Inspection Dates: 06/17/2004 - 06/18/2004



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 07/21/2004

Citation and Notification of Penalty

Company Name: Trees of Hawaii Inc
Inspection Site: 91-326 Kauhi St, Kapolei, HI 96707

Citation 1 Item 1 Type of Violation: Serious

29 CFR 1910.178(l)(1)(ii) [Refer to chapter 12-73.1, HAR] was violated because:

Employees were observed operating a forklift unsafely, i.e., not wearing a seatbelt and not looking backward when reversing. These employees were not properly trained in accordance with section 1910.178(l), exposing them to severe injuries from an accident.

29 CFR 1910.178(l)(1)(ii) states "Prior to permitting an employee' to operate a powered industrial truck, the employer shall ensure that each operator has successfully completed the training required by this paragraph (l)(5)."

Location: Establishment Base yard

Date By Which Violation Must be Abated:
Penalty:

08/23/2004
\$875.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 307258533
Inspection Dates: 06/17/2004 - 06/18/2004



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 07/21/2004

Citation and Notification of Penalty

Company Name: Trees of Hawaii Inc
Inspection Site: 91-326 Kauhi St, Kapolei, HI 96707

Citation 2 Item 1 Type of Violation: Other

29 CFR 1910.178(l)(6) [Refer to chapter 12-73.1, HAR] was violated because:

The employer did not ensure that each operator has been certified before operating a forklift.

29 CFR 1910.178(l)(6) states "The employer shall certify that each operator has been trained and evaluated as required by this paragraph (l). The certification shall include the name of the operator, the date of the training, the date of the evaluation, and the identity of the person(s) performing the training or evaluation."

Location: Establishment

Date By Which Violation Must be Abated:

08/23/2004

Penalty:

\$0.00

NELSON B. BEFITEL
DIRECTOR

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.